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In re Application of	:	
ARNOLD-HUYSER, et al.	:	DECISION ON PETITION
Serial No.: 10/532,287	:	
PCT No.: PCT/US03/33256	:	UNDER 37 CFR 1.47(a)
Int. Filing Date: 20 October 2003	:	
Priority Date: 21 October 2002	:	
Atty Docket No.: 026032-4900	:	
For: POINT-OF-INTEREST DISPLAY	:	
SYSTEM	:	

This decision is in response to applicant's "PETITION UNDER 37 C.F.R. 1.47" filed 24 February 2006 to accept the application without the signature of inventor John S. Bambini.

BACKGROUND

On 20 October 2003, applicant filed international application PCT/US03/33256 which claimed priority to a previous application filed 21 October 2002. Pursuant to 37 CFR 1.495, the deadline for payment of the basic national fee in the United States was to expire 30 months from the priority date, 21 April 2005.

On 21 April 2005, applicant filed a transmittal letter for entry into the national stage in the United States, which was accompanied by the requisite basic national fee as required by 35 U.S.C. 371(c)(1); an application data sheet and an Information Disclosure Statement.

On 28 September 2005, applicant was mailed a "NOTIFICATION OF MISSING REQUIREMENTS UNDER 35 U.S.C. 371" (Form PCT/DO/EO/905) informing applicant of the need to provide an oath or declaration of the inventors, in compliance with 37 CFR 1.497(a) and (b), identifying the application by the International application number and international filing date. Applicant was afforded two months to file the proper reply and informed that this period could be extended pursuant to 37 CFR 1.136(a).

On 24 February 2006, applicant filed the present petition under 37 CFR 1.47(a) to accept the application without the signature of joint inventor John S. Bambini accompanied by a petition for a three-month extension of time and payment of the appropriate extension of time fee. Therefore, the response is considered timely filed.

DISCUSSION

A petition under 37 CFR 1.47(a) must be accompanied by (1) the fee under 37 CFR 1.17(g), (2) factual proof that the missing joint investor refuses to execute the application or cannot be reached after diligent effort, (3) a statement of the last known address of the missing inventor, and (4) an oath or declaration by each 37 CFR 1.47(a) applicant on his or her own behalf and on behalf of the non-signing joint inventor. Applicant has satisfied items 1, 3 and 4.

As to item (2), as stated in the Manual of Patent Examination Procedure (MPEP), Section 409.03(d) Proof of Unavailability or Refusal, "Before a refusal can be alleged, it must be demonstrated that a *bona fide* attempt was made to present a copy of the application papers (specification, including claims, drawings, and oath or declaration) to the non-signing inventor for signature." 409.03(d) also states that:

Where a refusal of the inventor to sign the application papers is alleged, the circumstances of the presentation of the application papers and of the refusal must be specified in a statement of facts by the person who presented the inventor with the application papers and/or to whom the refusal was made. Statements by a party not present when an oral refusal is made will not be accepted.

Proof that a *bona fide* attempt was made to present a copy of the application papers (specification, including claims, drawings, and oath or declaration) to the nonsigning inventor for signature, but the inventor refused to accept delivery of the papers or expressly stated that the application papers should not be sent, may be sufficient. When there is an express oral refusal, that fact along with the time and place of the refusal must be stated in the statement of facts. When there is an express written refusal, a copy of the document evidencing that refusal must be made part of the statement of facts.

In the present case, applicant has provided an email which appears to be a refusal to join the present application. However, there is insufficient evidence at this time to grant applicant's petition. The refusal from Mr. Bambini references the "GPS patent application" and does not include any other information showing that he is refusing to execute an oath or declaration for the present application, i.e. title, serial number, etc. In addition, applicant has not provided any showing that the inventor was provided with a complete set of the application papers prior to this refusal. This is especially important in the present case as the refusal appears to have been made to a third party who has not provided an affidavit of the circumstances of the presentation of papers to the inventor. Applicant's petition references an email message of 01 December 2005 and a certified letter mailed on 07 February 2006. However, the contents of these mailings is not provided in the petition.

In light of the above, it is not possible to grant applicant's petition at this time.

CONCLUSION

For the reasons stated above, applicant's petition under 37 CFR 1.47(a) is **DISMISSED**.

Any reconsideration on the merits of this petition must be filed within **TWO (2) MONTHS** from the mail date of this decision. Any reconsideration request should include a cover letter entitled "Renewed Petition Under 37 CFR 1.47(a)." No additional petition fee is required. Extensions of time may be obtained under 37 CFR 1.136(a).

Any further correspondence with respect to this matter should be directed to Mail Stop PCT, Commissioner for Patents, Office of PCT Legal Administration, P.O. Box 1450, Alexandria, Virginia 22313-1450, with the contents of the letter marked to the attention of the Office of PCT Legal Administration.



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